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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE M. ORTIZ,

Defendant and Appellant.

B240739

(Los Angeles County
Super. Ct. No. GA084174)

APPEAL from a judgment of the Superior Court for Los Angeles County,
Candace J. Beason, Judge. Affirmed.

Sunnie L. Daniels, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant Jose M. Ortiz of one count of battery resulting in serious bodily injury (Pen. Code,¹ § 243, subd. (d)), and found true an allegation that he personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)). Defendant admitted that he suffered a prior conviction within the meaning of the Three Strikes law (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), and that he suffered a prior serious felony conviction within the meaning of section 667, subdivision (a)(1). The trial court denied defendant's motion to strike the prior conviction allegation and sentenced him to the midterm of three years in prison, doubled under the Three Strikes law, plus five years under section 667, subdivision (a)(1), for a total aggregate term of 11 years.

BACKGROUND

On July 21, 2011, at around 4:00 in the afternoon, Julio Tobar was driving west on Broadway in the city of San Gabriel when he saw two men crossing the street while engaged in a fist-fight. He saw one of the men, identified as defendant, knock the other man out. Defendant continued to punch the man in the face, then got up and started kicking him in the face while the man was on the ground, unconscious. Tobar pulled his truck over to the side of the road, got out, and said to defendant, "Hey, . . . he's out, let it go." Defendant immediately stopped, looked down at the victim and said, "I told you I don't want to do this." Defendant then called to a woman who had come out of a nearby house, asking her to get the car so they could take the victim to the hospital. Defendant tried to pick the victim up to carry him to the car, with Tobar's assistance, when the police arrived.

¹ Further undesignated statutory references are to the Penal Code.

The victim, Juan Quintana, knew defendant. Until shortly before the fight, Quintana had been living at the home of Adriana Pantoja, the mother of Quintana's nephew. Quintana, who was not in a relationship with Pantoja, moved out after Pantoja started dating defendant. On July 21, 2011, Quintana went to Pantoja's house because he wanted to retrieve cable boxes; he had a cable subscription when he lived there, and he left without taking the boxes, which he had to return to the cable company. When he arrived, Pantoja was outside. As he was talking to her, defendant came out of the house and, according to Quintana, started taunting him. Defendant grabbed Quintana's shirt and ripped or pulled it off. Quintana started walking toward his girlfriend's truck across the street, when he heard something behind him. He turned around and saw defendant. Quintana does not remember anything after that; he woke up in a hospital the next day. Quintana suffered numerous injuries to his face, including fractures of the left medial wall (the left part of his eye) and the nasal bone, which required immediate surgery.

Defendant was charged by information with one count of battery with serious bodily injury (§ 243, subd. (d)) and one count of assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)). The information also alleged that, as to both counts, defendant personally inflicted great bodily injury (§ 12022.7, subd. (a)), and that he had suffered a prior conviction within the meaning of the Three Strikes law and within the meaning of section 667, subdivision (a)(1).

At trial, the defendant presented a single witness, Lucia Reynoso, the mother of defendant's child, who also knows Quintana and Pantoja. Reynoso testified that earlier in the day on July 21, 2011, she saw Quintana at the W.I.C. office. They had a conversation about defendant in which Quintana expressed animosity toward defendant. In her presence, Quintana placed a call to Pantoja's telephone. Reynoso could hear the voice on the other end of the call, and heard him speaking

first to Pantoja and then to defendant. She heard Quintana say that he was going to go right over to Pantoja's house and beat defendant up.

In closing arguments, defense counsel argued that Quintana was the aggressor in the fight and that defendant acted in self defense. The prosecutor told the jury that both counts were based solely upon the blows defendant inflicted after Quintana was unconscious, and argued that defendant could not claim self defense with regard to those blows.

The jury found defendant guilty of battery with serious bodily injury and found that defendant personally inflicted great bodily injury on Quintana, but it could not reach a verdict on the assault count. The court declared a mistrial on that count, and ultimately dismissed it. Defendant timely filed a notice of appeal from the judgment.

DISCUSSION

After review of the record, defendant's court-appointed counsel filed an opening brief asking this court to review the record independently in accordance with the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

We advised defendant that he had 30 days within which to submit any contentions or issues that he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.